

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929**

**CRP.No. 295 of 2007()**  
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**AGAINST THE ORDER DATED 15/12/2006 IN IA.1159/2006 IN  
OS.213/1999 of SUBORDINATE JUDGE'S COURT, PALAKKAD**  
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**REVN. PETITIONERS: RESPONDENTS/DEFENDANTS:**  
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- 1. LAKSHMI, W/O.LATE CHAMI, KUNDUPARAMBIL,  
PALLASSANA AMSOM, CHITTUR TALUK.**
- 2. SIVADASAN, S/O.CHAMI, DO. DO.**
- 3. DEVU, W/O.SUDEVAN, VALIYACHALLAYIL,  
MUTHALAMADA AMSOM, CHITTUR TALUK.**
- 4. LEELA, W/O.CHANDRAN, IDACHIRAYIL,  
MUTHALAMADA AMSOM, CHITTUR TALUK.**
- 5. SATHYABHAMA, W/O.NARAYANAN,  
PUTHENPURAYIL, POTHUNDI, NENMARA  
CHITTUR TALUK.**

**BY ADV. SRI.SAJAN VARGHEESE K.  
SRI.LIJU. M.P  
SRI.M.N.SAJEER**

**RESPONDENT: PETITIONER/PLAINTIFF:**  
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**PREMA, W/O.LATE ASHOK KUMAR,  
ITTILINGAL HOUSE, PALLASSANA AMSOM,  
CHITTUR TALUK.**

**BY ADV. SMT.JYOTHILAKSHMI K.K.**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 30/05/2007 ALONG WITH C.R.P.NO.296 OF 2007, THE COURT ON  
THE SAME DAY PASSED THE FOLLOWING:**

**M.N.KRISHNAN, J**  
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**C.R.P.Nos.295 & 296 OF 2007**  
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**Dated this the 30th day of May, 2007**

**ORDER**

These revisions are preferred against the order of the Sub Court, Pala in I.A.Nos.1159 & 1160 of 2006 in O.S.No.213 of 1999. The respondent in the revision petition had filed a suit for partition and it was dismissed for default. With a delay of 931 days an application was filed to condone the delay and restore the suit to file. The suit was dismissed on 23.9.2003. The reasons averred in the petition for condonation of delay are that the plaintiff-petitioner is a patient suffering from HIV and she had undergone treatment in the Medical College Hospital, Coimbatore. It is also stated that she had lost her husband due to attack of HIV. So the unfortunate family was caught hold of by the deadly disease which is frowned upon and looked upon unsympathetically by one and all members of the society. PW1 was personally present before court and the court has observed that with the naked eyes and she was seen to be very weak and she was on the verge of death with respect to her physical appearance also. So the sum and substance of the materials available before the trial court would establish

the fact that the wife has got ailment from the husband. She is undergoing treatment and the husband had already died and there is nobody to look after her and the evidence tendered by her that she was in the Medical College Hospital, Coimbatore during the relevant period is also accepted by the court below. Even otherwise when a person is inflicted with the disease of HIV there is a social bar and one cannot be able to move as freely as one wants to do. Under such circumstances, her non-appearance before court and the delay in filing the application have to be considered sympathetically and one cannot hold that she was grossly negligent or was behaving in gross misconduct. Learned Sub Judge had exercised his judicial discretion properly and had condoned the delay and restored the suit to file.

I do not find any infirmity, illegality or irregularity in the orders passed by the courts below. Therefore the orders under challenge are confirmed and the civil revision petitioners are dismissed. Considering the nature of the case, O.S.No.213/1999 is restored to file. Being a matter of 1999 and the fact that the plaintiff is an HIV patient, it is desirable that the trial court shall dispose of the matter as expeditiously as possible, after

affording an opportunity to both the parties to put forward their respective contentions.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**